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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,096	10/29/2001	Carl E. Whitcomb	WHIT/0002	7255
7590 STREETS & STEELE Suite 355 13831 Northwest Freeway Houston, TX 77040				
			EXAMINER	
			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
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			04/15/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* CARL E. WHITCOMB

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Application No. 10/075,096  
Technology Center 3600

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Mailed: April 15, 2009

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Before KRISTA ZELE *Deputy Chief Appeals Administrator*  
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 14, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

### EXAMINER'S ANSWER, HEADINGS

A review of the Examiner's Answer mailed June 4, 2007, is deficient for it does not comply with the guideline set forth in § 1207.02 of the Manual of Patent Examining Procedure (MPEP) (Eight Edition, Rev. 6, September 2007). Specifically, the Examiner's statement under the heading "(2) Related Appeals and Interferences" is incorrect.

The Examiner's Answer (2) Related Proceedings Appendix as set forth in MPEP § 1207.02., states:

(2) Related Appeals and Interferences. A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by, or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph should be included in the *Related proceedings appendix* section.

It should be noted that the deficiency was previously noted by the Appeal Center Return mailed July 5, 2007. Corrective action is required.

### ACKNOWLEDGMENT OF REPLY BRIEF

On August 17, 2007, the Examiner mailed a communication acknowledging receipt of Appellants' Reply Brief, dated July 12, 2007. A review of the Response to Reply Brief reveals that the Examiner did not provide proper acknowledgment. The comments made by the Examiner would constitute being a Supplemental Examiner's Answer.

The Examiner's response to Reply Brief as set forth in MPEP § 1208, which states:

(1)After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

(2)A supplemental examiner's answer responding to a reply brief may not include a new ground of rejection.

(b)If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

A review of the Response to Reply Brief reveals that the Examiner did not provide proper approval.

### CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for submission of a PTOL-90 which provides correct status of "(11) Related Proceedings Appendix" for the Examiner's Answer mailed June 4, 2007;
- 2) vacate the Examiner's Acknowledgment to the Reply Brief mailed August 18, 2007;
- 3) proper acknowledgment of the Reply Brief is required and/or appropriate consideration of the Reply Brief dated July 12, 2007;
- 4) acquiring approval for any Supplemental Examiner's Answer in response to the Reply Brief mailed July 12, 2007, if appropriate;

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and

5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/MTV/lb

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